

August 16, 2019

**Re: ERO Proposal Number 019-0184
O.Reg. 82/98**

**Proposed Changes to Regulations under the Development Charges Act,
1997**

Thank you for the opportunity to comment on Proposed Changes to Regulations under the Development Charges Act, 1997.

The City of Guelph provides the following comments on the “Proposed Changes to O.Reg 82/98 under the *Development Charges Act, 1997* related to Schedule 3 of Bill 108, the *More Homes, More Choice Act, 2019*.

1. Transition

The Minister proposes that the specified date for municipalities to transition to community benefits is January 1, 2021.

From this date to beyond:

- Municipalities would generally no longer be able to collect development charges for discounted services*

City of Guelph Recommendations:

The proposal should be amended to set the “specified date” for the purposes of s. 9.1 of the amended Development Charges Act, 1997 to no earlier than January 1, 2023.

The Minister should ensure that related amendments introduced through schedule 12 of the More Homes, More Choice Act, 2019 removing the “alternative requirement” for parkland dedication required under sections 42 and 51.1 of the Planning Act will not be proclaimed in force before the “specified date”.

The Minister should consider a legislative amendment to s. 51.1 of the Planning Act to close a potential gap with respect to parkland dedication/community benefits charges for Plans of Subdivision approved after s. 9 of Schedule 12 of the *More Homes, More Choice Act, 2019* is proclaimed in force, but before a municipality adopts a community benefit by-law as authorized by the amendments introduced through that section.

City Hall
1 Carden St
Guelph, ON
Canada
N1H 3A1

T 519-822-1260
TTY 519-826-9771

guelph.ca

The Minister should add transitional language for the discounted reserve fund balances and debt or capital obligations in place at the time of the specified date or the time of the community benefit charge by-law approval. Guelph recommends that any funds/obligations shall be transferred to the new community benefit charge reserve fund at the date of transition.

Commentary to support the recommendations:

The proposed specified date will not give municipalities' adequate time to do all that is required to amend and update existing development charges by-laws as well as prepare the required community benefits strategy and pass a community benefits charge by-law under the community benefits authority, once it is brought into force. This is particularly true given that the many aspects of this work, including the regulatory requirements for community benefits strategies and the proposed maximum "cap" on community benefits charges are not known at this time. For context, the most recent development charge study took approximately 18 months to complete from planning to by-law passage. This ensured appropriate community engagement time was allotted. The current proposed provincial timelines would not provide for quality engagement time with our community.

There is a potential for significant gaps in municipal revenues as a result of the transition to the community benefits regime introduced through the *More Homes, More Choice Act, 2019* if the existing "alternative rate" for parkland dedication under the *Planning Act* is removed before municipalities have implemented community benefits charge by-laws. These changes should not be brought into force prior to the "Specified Date".

There remains a potential issue with respect to parkland dedication imposed as a condition of a Plan of Subdivision. As amended by the *More Homes, More Choice Act, 2019*, subsection 51.1(6) will provide that where parkland dedication is required as a condition of a plan of subdivision imposed after the date section 9 of schedule 12 of the *More Homes, More Choice Act, 2019* comes into force any development or redevelopment of lands within that plan will not be subject to any community benefits charges by-law. This potentially immunizes future redevelopment within lands defined by a plan of subdivision approved after the new section 37 comes into force, but before a community benefits charge by-law is passed, from all future community benefits charges. A legislative change may be required to address this issue.

There remains a lack of guidance to how the transition of the discounted development charge reserve funds will be transitioned to the new community benefit charge regime. The City will have both positive and negative position discounted development charge reserve funds and in order to appropriately plan, this guidance is required.

2. Scope of types of Development Charges Deferral;

The Minister proposes that the types of developments proposed for development charge deferrals be defined as follows:

- *“Rental housing development” means construction, erection or placing of one or more buildings or structures for or the making of an addition or alteration to a building or structure for residential purposes with four or more self-contained units that are intended for use as rented residential premises*
- *“Non-profit housing development” means the construction, erection or placing of one or more buildings or structures for or the making of an addition or alteration to a building or structure for residential purposes by a non-profit corporation.*
- *“Institutional development” means the construction, erection or placing of one or more buildings or structures for or the making of an addition or alteration to a building or structure for:*
 - *long-term care homes;*
 - *retirement homes;*
 - *universities and colleges;*
 - *memorial homes; clubhouses; or athletic grounds of the Royal Canadian Legion; and*
 - *hospices*
- *“Industrial development” means the construction, erection or placing of one or more buildings or structures for or the making of an addition or alteration to a building or structure for:*
 - *manufacturing, producing or processing anything,*
 - *research or development in connection with manufacturing, producing or processing anything,*
 - *storage, by a manufacturer, producer or processor, of anything used or produced in such manufacturing, production or processing if the storage is at the site where the manufacturing, production or processing takes place, or*
 - *retail sales by a manufacturer, producer or processor of anything produced in manufacturing, production or processing, if the retail sales are at the site where the manufacturing, production or processing takes place.*
- *“Commercial development” means the construction, erection or placing of one or more buildings or structures for or the making of an addition or alteration to a building or structure for:*

- *office buildings as defined under subsection 11(3) in Ontario Regulation 282/98 under the Assessment Act; and*
- *shopping centres as defined under subsection 12(3) in Ontario Regulation 282/98 under the Assessment Act.*

City of Guelph Recommendations:

Additional consultation with municipalities should be required with respect to certain terms. “Rental Housing Development” “Non-Profit Housing Development” and “Institutional Development” are overly broad and may capture types of development not intended. Terms within the proposed definitions “retirement home”) may require more specific definition. These definitions should be rationalized and linked to approved facilities under other provincial legislation (e.g. Public Hospital Act, Mental Health Act, Ministry of Training, Colleges and Universities Act, Ontario Not-for-Profit Corporations Act) to provide clear boundaries for the organizations that are eligible for this deferral.

Any exemptions should be explicitly tied to the functions being promoted (e.g. any exempted development by Universities and Colleges need to be connected to the educational purposes of those institutions, and not extend to development for other purposes or on other lands owned by those institutions that is not used for an educational purpose).

The proposed change should ensure that definitions in the regulation under the Development Charges Act, 1997 are rationalized, and do not conflict, with similar definitions in regulations under the Assessment Act. Warehouses, or warehouse expansions, not connected to on-site manufacturing, production or processing should not be eligible for deferral of payment or exemption for existing industrial buildings.

Commentary to support the recommendations:

The deferral of development charges will create a significant burden for municipalities, increasing both administrative and technology costs, creating new and unnecessary processes at time of building permit issuance and will impact on municipal debt capacity due to the need to cash flow these deferred payments while still providing the facilities and services they are intended to fund. The deferral will leave the municipality open to the risk of payment default, as a developer or associated company(s) could file bankruptcy and not pay the outstanding DCs owing.

Ambiguity in the definition for organizations/facilities eligible for the deferral of development charges causes significant burden on the municipality to create these boundaries through the municipal by-law and then defend them through the legal system. Further it causes administrative burden to continuously hear and advise on each development application for these requests. Clear and legislatively defensible boundaries are requested so that it is clear what the

eligibility requirement is for each category. Providing deferrals is costly on the tax payer, so they need to be limited and provided only when it is providing a benefit that is intended, that being affordable and rental housing.

The purpose of any exemption or deferral is to incent specific types of developments and the cost of those incentives are borne by the tax payer. For this reason, these should be limited to only specific purposes and functions. Universities can be one of the largest land developers within a city and their holdings are not all for the purpose of education. Development charge deferrals and exemptions should be limited only to those facilities required for education purposes.

Industrial and commercial development definitions, including the definition of “existing industrial building” should be rationalized with the definitions in regulations under the Assessment Act. The definition of “Existing Industrial Building” should also be rationalized. Warehouses not immediately connected with uses that provide employment and strengthen the industrial tax base should not qualify for any deferral or exemption for expansion of existing industrial buildings.

3. Period of Time for Which the Development Charge Freeze would be in Place:

In order to encourage development to move to the building permit stage so that housing can get to market faster and provide greater certainty of costs, the Minister is proposing that the development charge would be frozen until two years from the date the site plan application is approved, or in the absence of the site plan application, two years from the date the zoning application was approved.

City of Guelph Recommendations:

The proposed change to the regulation should be amended to freeze the development charge for one (1) year from the date of Site Plan approval (or Zoning approval). Further, in the case of a rezoning approval, the date of approval should be defined as the date when it was approved by the local Council. If that zoning is subsequently appealed to the LPAT, the development charge freeze does not stay in place until the matter is settled by the tribunal.

Building permit and site plan applications are often made simultaneously, and site plan approval is often the last step required for the issuance of a building permit. Two years from site plan approval to building permit would already represent a greater than usual delay, and where such delays are occurring it is unlikely to be related to the payment of development charges. A one year freeze will provide more incentive for a greater number of housing development projects, and impose less administrative burden on municipalities.

4. Interest rate during deferral and freeze of development charges

The Minister is not proposing to prescribe a maximum interest rate that may be charged on development charge amounts that are deferred or on development charges that are frozen.

The City of Guelph supports the proposed change.

5. Additional dwelling units

The existing O. Reg. 82/98 prescribes existing single detached dwellings, semi-detached/row dwellings and other residential buildings as buildings in which additional residential units can be created without triggering a development charge and rules related to the maximum number of additional units and other restrictions. It is proposed that this regulation be amended so that units could also be created within ancillary structures to these existing dwellings without triggering a development charge (subject to the same rules/restrictions).

The City of Guelph has no comment, this is consistent with the Legislation.

It is also proposed that one additional unit in a new single detached dwelling; semi-detached dwelling; and row dwelling, including in a structure ancillary to one of these dwellings, would be exempt from development charges.

The City of Guelph has no comment, this is consistent with the Legislation including previous amendments.

It is also proposed that within other existing residential buildings, the creation of additional units comprising 1% of existing units would be exempt from development charges.

The City of Guelph strongly believes the regulation should not be amended to make this exemption mandatory for all municipalities.

The policy objectives of this proposed change are unclear. It would seem to apply in an extremely limited number of cases in most Ontario municipalities, and there is no apparent rationale for requiring this type of growth to be subsidized by the existing tax-base. If such development is common or requires promotion within a specific municipality, the elected council of that municipality should decide if it ought to be exempted. Further this is a burdensome exercise to add to the process of determining quantity of development charges. Municipalities want a system that is efficient, achievable with technology and does not require manual staff intervention for charge calculations.

6. What Services can be charged for

The minister is proposing that various municipal services remain eligible for Development Charges.

(4) A development charge by-law may impose development charges to pay for increased capital costs required because of increased needs only for the following services:

12. Other services as prescribed. 2019, c. 9, Sched. 3, s. 2.

City of Guelph Recommendation:

The City recommends that where municipalities have an Active Transportation Plan in place, that routes identified within the Active Transportation Plan be eligible for Development Charges. The City recommends that Active Transportation Networks be considered as an eligible cost for Development Charges under 'Other Services as prescribed' within the regulation.

The More Homes More Choices Act espouses the values of improving travel times between work and home and improving commuting time. Active Transportation systems support movement within a community by providing safe and efficient destination oriented travel. Active Transportation plans help connect homes with schools and employment areas, they provide essential pedestrian and bicycle connections to transit hubs that have been identified as a critical part of this legislation. Active Transportation is supported by the Chief Public Health Officer's report on the State of Public Health in Canada 2017 as a way to build communities that support an active, healthy lifestyle. These networks form an essential part of how people are connected to transit, they are an effective and practical commuting option when designed as a network that connects residential areas with employment lands.

Please do not hesitate to contact me if you have any questions regarding the City of Guelph's feedback.

Sincerely,



Kealy Dedman
Deputy CAO - Infrastructure, Development and Enterprise

T 519-822-1260 extension 3445
E kealy.dedman@guelph.ca

Cc Barbara Swartzentruber - Executive Director, Intergovernmental Relations and Strategy

Tara Baker - City Treasurer/ General Manager, Finance